



February 26, 2002

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
Police Department - M.S. 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2002-0916

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158992.

The City of Arlington (the "city") received a written request for records of the internal affairs investigation into allegations that an off-duty police officer sexually assaulted a minor. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note at the outset that contained among the records you submitted to this office are records from the criminal investigation of this matter. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

After reviewing the submitted records, we conclude that those records that were created or used in the criminal investigation under chapter 261 of the Family Code are made confidential under section 261.201 of the Family Code and may be released only in accordance with that provision. You have not indicated that the city has adopted a rule that governs the release of this type of information in this instance. Therefore, we assume that no such regulation exists. Given that assumption, the records from the criminal investigation must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). *But see* Fam. Code § 261.201(b) (provision for court ordered access).

We now address your section 552.108 claim with respect to the remaining submitted information. Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the requested records “describe an incident that is currently under review by the Tarrant County District Attorney’s Office for potential criminal prosecution.” Based on this representation, we conclude that the city may withhold most of the remaining records pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Accordingly, the city must release these types of information in accordance with *Houston Chronicle*, with the following exception.

As noted above, the submitted information pertains to an alleged sexual assault. Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Clearly, an instance of sexual assault implicates the privacy interests of the assault victim. *See* Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common-law privacy). We therefore conclude that the city must withhold all information tending to identify the victim of the alleged sexual assault.

In summary, the city must withhold the records created or used during the course of the criminal investigation pursuant to section 261.201 of the Family Code. Most of the remaining records in the internal affairs file may be withheld pursuant to section 552.108(a)(1) of the Government Code. Although the city must release "basic information" from the internal affairs file, the identity of the complainant must be withheld pursuant to common-law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/er

Ref: ID# 158992

Enc: Submitted documents

c: Ms. Tanya Eiserer
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(w/o enclosures)